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9 File No.: 108283

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 BWP Media USA Inc. d/b/a Pacific Coast
13 News,

14 Plaintiff,

15 vs.

16 Internet Brands, Inc.,

17 Defendant.

Docket No:

COMPLAINT

JURY TRIAL DEMANDED

21 BWP Media USA Inc. d/b/a Pacific Coast News ("*BWP*" and/or
22 "*Plaintiff*"), by and through its undersigned counsel, as and for its Complaint
23 against Defendant Internet Brands, Inc. ("*Defendant*") states and alleges as
24 follows:

25 **INTRODUCTION**

- 26 1. This action seeks to recover for copyright infringement.
- 27 2. Plaintiff herein provides entertainment-related photojournalism
- 28

1 goods and services. Specifically, Plaintiff owns the rights to a multitude of
2 photographs, primarily featuring celebrities, which it licenses to online and print
3 publications for profit. Plaintiff has obtained U.S. copyright registrations
4 covering the majority of its photographs, and many others are the subject of
5 pending copyright applications.

6 3. Defendant owns and operates a website known as
7 atvconnection.com (the “Website”) and, without permission or authorization
8 from Plaintiff actively copied, stored, modified, and/or displayed Plaintiff’s
9 photographs on the Website. Defendant engaged in this misconduct knowingly
10 and in violation of the United States copyright laws.

11 **JURISDICTION AND VENUE**

12 4. This Court has subject matter jurisdiction over the federal copyright
13 infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331.

14 5. Additionally, this Court has subject matter jurisdiction over all of
15 the photographs, including any unregistered images. *Reed Elsevier, Inc. v.*
16 *Muchnick*, 559 U.S. 154, 130 S.Ct. 1237 (2010); *Perfect 10, Inc. v.*
17 *Amazon.com, Inc.*, 508 F.3d 1146, 1154 (9th Cir. 2007); *Olan Mills, Inc. v. Linn*
18 *Photo Co.*, 23 F.3d 1345, 1349 (8th Cir. 1994); *Pac. & S. Co., Inc., v. Duncan*,
19 744 F.2d 1490, 1499 n. 17 (11th Cir. 1984).

20 6. This Court has personal jurisdiction over Internet Brands, Inc.
21 because Internet Brands, Inc. maintains its principal place of business in
22 California.

23 7. Venue is proper under 28 U.S.C. §1391(a)(2) because Internet
24 Brands, Inc. does business in this Judicial District and/or because a substantial
25 part of the events or omissions giving rise to the claim occurred in this Judicial
26 District.

PARTIES

I. Plaintiff

8. BWP is a corporation duly organized and existing under the laws of the State of Delaware and maintains its principal place of business in Los Angeles County, California.

II. Defendant

9. Upon information and belief, Defendant Internet Brands, Inc., is a California Corporation with a principal place of business in Los Angeles County, California and is liable and responsible to Plaintiff based on the facts herein alleged.

FACTS COMMON TO ALL CAUSES OF ACTION

10. The Website is a popular and lucrative enterprise that purposefully displays celebrity and/or news photographs, including Plaintiff's copyrighted photographs.

11. The Website is monetized in that it contains paid advertisements and/or sells merchandise to the public and, upon information and belief, Defendant profits from these activities.

12. Without permission or authorization from Plaintiff, Defendant volitionally selected, copied, modified, stored and/or displayed Plaintiff's copyright protected photographs (hereinafter collectively referred to as "*Photographs*"), as set forth in Exhibit "1" which is annexed hereto and incorporated in its entirety herein, on the Website.

13. The Photographs were copied, modified, stored and/or displayed without license or permission, thereby infringing on Plaintiff's copyrights (hereinafter collectively referred to as the "*Infringements*").

14. As is set forth more fully in Exhibit "1", each listed Infringement contains the URL ("*Uniform Resource Locator*") for a fixed tangible medium of expression that was sufficiently permanent or stable to permit it to be

1 communicated for a period of more than transitory duration and therefore
2 constitutes a specific item of infringement. *17 U.S.C. §106(5); Perfect 10, Inc.*
3 *v. Amazon.com, Inc.*, 508 F.3d 1146, 1160 (9th Cir. 2007).

4 15. Each listed infringement in “Exhibit 1” is an exact copy of
5 Plaintiff's original image that was directly copied and stored by Defendant on
6 the Website.

7 16. Each infringement listed in “Exhibit 1” constitutes a separate and
8 distinct act of infringement by Defendant.

9 17. Upon information and belief, Defendant takes an active and
10 pervasive role in the content posted on its Website including, but not limited to,
11 copying, posting, selecting, commenting on and displaying Plaintiff's
12 Photographs.

13 18. Upon information and belief, Defendant directly contributes to the
14 content posted on the Websites by, *inter alia*, directly employing staff writers,
15 editors, moderators and/or administrators as Defendant's agents (hereinafter
16 collectively referred to as “Employees”) who are responsible for operating and
17 controlling the activities on the Website.

18 19. Defendant's act of designating Employees as staff writers, editors,
19 moderators and/or administrators, regardless of their actual position or their
20 nature of relationship with Defendant, and providing them with specific
21 Website-related powers beyond that of a typical user leads a “third party
22 reasonably to believe the actor has authority to act on behalf of the Defendant.”
23 Restatement (Third) of Agency, § 2.03 (2006); *Columbia Pictures Industries,*
24 *Inc. v. Fung*, 2009 WL6355911 (C.D.Cal., 2009) *aff'd in part and modified*, 710
25 F.3d 1020 (9th Cir. 2013).

26 20. At all material times hereto the Employees were acting within the
27 course and scope of their employment.

28 21. At all material times hereto the Employees were acting within the

1 course and scope of their agency.

2 22. 17 U.S.C. §512, also known as the Digital Millennium Copyright
3 Act (“DMCA”) provides a defense against an infringement that is “by reason of
4 the storage at the direction of a user.” The applicable legislative history
5 provides that “[i]nformation that resides on the system or network operated by
6 or for the service provider through its own acts or decisions and not at the
7 direction of a user does not fall within the liability limitation of subsection (c).”
8 *See* S.Rep. No. 105–190, at 43 (1998).

9 23. Defendant's conduct is not safe harbored by DMCA, in that none of
10 the Infringements were posted at the direction of a “user” as that term is defined
11 in 17 U.S.C. §512(c).

12 24. The Infringements at issue were posted by Defendant’s staff
13 writers, editors, moderators and/or administrators.

14 25. Upon information and belief, Defendant was aware of facts or
15 circumstances from which the determination regarding the Infringements was
16 apparent.

17 26. Defendant cannot claim that it was unaware of the infringing
18 activities, including the specific Infringements which form the basis of this
19 complaint, since such a claim would amount to only willful blindness to the
20 Infringements on the part of Defendant.

21 27. Upon information and belief, Defendant engaged in the
22 Infringements knowingly and in violation of applicable United States Copyright
23 Laws.

24 28. Additionally, on information and belief, Defendant, with “red flag”
25 knowledge of the infringements, failed to promptly remove same (*see* 17 U.S.C.
26 §512(c)(1)(A)(i)) as evidenced by the fact that Defendant’s Employees created
27 and/or authored the Infringements at issue.

28 29. Further, Defendant has the legal right and ability to control and

1 limit the infringing activities on its Website and exercised and/or had the right
2 and ability to exercise such right, which, on information and belief, is evidenced
3 by the following:

4 (a) Defendant's Employees were responsible for the content at issue;
5 and

6 (b) Defendant's Employees had complete control over and actively
7 reviewed and monitored the content posted on the Website.

8 30. Upon information and belief, Defendant has received a financial
9 benefit directly attributable to the Infringements. Specifically, by way of the
10 Infringements, the Website had increased traffic and, in turn, Defendant realized
11 an increase its advertising revenues and/or merchandise sales. *17 U.S.C.*
12 *§512(c)(1)(B)*.

13 31. Upon information and belief, a large number of people have viewed
14 the unlawful copies of the Photographs on the Website.

15 32. Upon information and belief, Defendant at all times had the ability
16 to stop the reproduction and display of Plaintiff's copyrighted material.

17 33. As a result of Defendant's misconduct, Plaintiff has been
18 substantially harmed.

19 **FIRST COUNT**

20 ***(Direct Copyright Infringement, 17 U.S.C. §501 et seq.)***

21 34. Plaintiff repeats and incorporates by reference the allegations
22 contained in the preceding paragraphs, as though set forth in full herein.

23 35. The Photographs are original, creative works in which Plaintiff
24 owns valid copyright properly registered with the United States Copyright
25 Office.

26 36. Plaintiff has not licensed Defendant the right to use the
27 Photographs in any manner, nor has Plaintiff assigned any of its exclusive rights
28 in the Copyrights to Defendant.

1 ability to police the images on the Website when its Employees, staff writers,
2 editors, moderators, administrators and/or members created the post at issue.

3 44. Upon further information and belief, Defendant had the practical
4 ability to police the images on the Website when its Employees, staff writers,
5 editors, moderators, administrators and/or members edited, modified and/or
6 interacted with the Photographs and, therefore, had the right and ability to
7 supervise and control the Infringements.

8 45. As a direct and proximate result of Defendant's refusal to exercise
9 its right to stop or limit the infringing conduct, on information and belief,
10 Defendant's members have continued to infringe upon Plaintiff's Photographs
11 which, in turn, generates profits for Defendant. Consequently, Defendant
12 directly benefits from the use of the Infringements.

13 46. Upon information and belief, Defendant enjoyed a direct financial
14 benefit from the infringing activity of its members, Employees, staff writers,
15 editors, moderators, administrators and/or members from, inter alia, advertising
16 revenue from the increased traffic to its Website and from an increase in fees
17 paid by sponsors.

18 47. Upon information and belief, Defendant further enjoyed a direct
19 financial benefit from using the "draw" of Plaintiff's Photographs to increase
20 user traffic, thereby increasing advertising and/or sales revenue.

21 48. Defendant is liable as a vicarious infringer since it profited from
22 direct infringement while declining to exercise a right to stop or limit it. *See*
23 *e.g., Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d. 1146, 1171 (9th Cir. 2007);
24 *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 929-30
25 (2005).

26 49. As a direct and proximate result of Defendant's misconduct,
27 Plaintiff has been substantially harmed and should be awarded statutory
28 damages against Defendant pursuant to 17 U.S.C. §504(c) of up to \$30,000 per

1 infringement, or, up to \$150,000 per infringement for any infringement found to
2 be willful, in an amount to be proven at trial.

3 **THIRD COUNT**

4 ***(Injunction Pursuant to 17 U.S.C. §502)***

5 50. Plaintiff repeats and incorporates, as though fully set forth herein,
6 each and every allegation contained in the preceding paragraphs, as though set
7 forth in full herein.

8 51. Plaintiff requests a permanent injunction pursuant to 17 U.S.C.
9 §502(a) prohibiting Defendant from displaying the Infringements.

10 **FOURTH COUNT**

11 ***(Attorney Fees and Costs Pursuant to 17 U.S.C. §505)***

12 52. Plaintiff repeats and incorporates, as though fully set forth herein,
13 each and every allegation contained in the preceding paragraphs, as though set
14 forth in full herein.

15 53. Plaintiff requests, pursuant to 17 U.S.C. §505, their attorney fees
16 and costs for the prosecution of this action.

17 **JURY DEMAND**

18 54. Plaintiff hereby demands a trial of this action by jury.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

21 That the Court enters a judgment finding that Defendant has infringed on
22 Plaintiff's rights to the Photographs in violation of 17 U.S.C. §501 et seq. and
23 award damages and monetary relief as follows:

- 24 a. Statutory damages against Defendant pursuant to 17 U.S.C.
25 §504(c) of up to \$30,000 per infringement, or, up to \$150,000
26 per infringement for any infringement found to be willful, in an
27 amount to be proven at trial or, in the alternative, Plaintiff's
28 actual damages and the disgorgement of Defendant's wrongful

- 1 profits in an amount to be proven at trial; and
2 b. A permanent injunction against Defendant pursuant to 17 U.S.C.
3 §502; and
4 c. Plaintiff's attorneys' fees pursuant to 17 U.S.C. §505; and
5 d. Plaintiff's costs; together with
6 e. Such other relief that the Court determines is just and proper.
7

8 DATED: October 12, 2015
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